

AFTER RECORDING, RETURN TO:
City Secretary
City of Frisco, Texas
6101 Frisco Square Blvd., 5th Floor
Frisco, Texas 75034

RETAIL DEVELOPMENT AGREEMENT

This Agreement (the "Agreement") is entered into as of the _____ day of _____ 2011 by and between The City of Frisco, Texas, a municipal corporation (the "City"), and Costco Wholesale Corporation, a Washington corporation ("Costco").

RECITALS:

WHEREAS, Costco is acquiring certain unimproved land located at the southeastern corner of the intersection of Eldorado Parkway and the Dallas North Tollway, in Frisco, Texas as more particularly described in **Exhibit "A"** (the "Property") on which Costco plans to construct and own a wholesale and retail general merchandise facility containing approximately one hundred forty thousand (140,000) square feet of space, more or less, that is heated, ventilated and air conditioned; and

WHEREAS, Costco has requested that the City authorize and provide an economic development grant as provided herein; and

WHEREAS, pursuant to Chapter 380 of the Texas Local Government Code and for the public purpose of promoting economic development and diversity, increasing employment, reducing unemployment and underemployment, expanding commerce and stimulating business and commercial activity in the State of Texas, Collin County and the City, the City desires to offer an economic development grant to Costco as more particularly described in this Agreement.

NOW, THEREFORE, for and in consideration of the promises, covenants and agreements set forth herein, the receipt and sufficiency of which are hereby acknowledged, the City and Costco agree as follows:

1. **Project Subject of Agreement.** Costco plans to construct a wholesale and retail general merchandise facility containing at least one hundred forty thousand (140,000) square feet of space that is heated, ventilated and air conditioned owned by Costco (the "Project") on the Property, all as further described in the submittals filed with the City in order to obtain such permits as may be required under applicable City ordinances, and generally in accordance with the Site Plan attached hereto as **Exhibit "B"** (the "Site Plan"), as such Site Plan may be modified during the approval process with the City.

2. **Economic Development Grant.** Subject to the terms and conditions of this Agreement, the City agrees to provide and shall provide to Costco an economic development grant as follows:

a. for the period beginning on the Commencement Date (hereinafter defined) and extending until the sooner to occur of (i) the tenth (10th) anniversary date thereafter, or (ii) the receipt by Costco of Two Million Seven Hundred Thousand and No/100ths Dollars (\$2,700,000.00) (the "Initial Grant Termination Date"), the City shall pay to Costco as an initial grant (the "Initial Grant"), on a quarterly basis as set forth hereinafter, one-half of the Sales Tax Receipts (hereinafter defined) actually collected by the City from the State of Texas for Taxable Items (as hereinafter defined) made at the Project (such amount to equal, but not exceed, Sales Tax Receipts equal to one-half of one percent (0.5%) of Taxable Items from the Project actually collected by the City) (the "Initial Grant"); and

b. for the period commencing on January 1 of the year following the Initial Grant Termination Date and continuing for a period of ten (10) years thereafter the City shall pay to Costco as a subsequent grant (the "Subsequent Grant" which together with the Initial Grant are collectively referred to as the "Grant"), on an annual basis as set forth hereinafter an amount equal to the lesser of (i) Seventy Thousand and No/100ths Dollars (\$70,000.00) per year, or (ii) fifty percent (50%) of the ad valorem taxes actually collected by the City that are directly associated with the Project for the immediately preceding year. Subject to having met the criteria to qualify set forth in this Agreement, the City shall pay Costco the Subsequent Grant in annual installments on the last day of February of each year following the year in which Costco paid its ad valorem taxes through the end of the period of the Subsequent Grant.

"Sales Tax Receipts" shall mean the City's receipts from the State of Texas from the collection of sales tax for sales of Taxable Items made by Costco or its successors and permitted assigns, or any of their respective affiliates, lessees, sublessees or licensees at the Project. "Taxable Items" shall have the same meaning assigned by Chapter 151, TEX. TAX CODE, as amended from time to time.

3. **Criteria to Qualify for Grant.** The following conditions must be satisfied for the entire term of the Agreement in order to qualify for the Grant:

a. Completion of Construction (as hereinafter defined) of the Project must occur by the date that is two (2) years after the City has issued all necessary permits to construct the Project (the "Completion Deadline"), as such Completion Deadline may be extended, pro tanto, by delays caused by Force Majeure (as defined in Paragraph 8 below). "Completion of Construction" shall mean that a certificate of occupancy for the Project has been issued (or that a temporary certificate of occupancy has been issued for the Project under which Costco is permitted to, and does, open for business).

b. The Project must add taxable value of not less than ten million dollars (\$10,000,000.00) for real and business personal property combined. This condition shall be initially satisfied if Costco shall deliver to the City a certificate from an authorized officer of Costco certifying to the City that Costco has invested at least ten million dollars (\$10,000,000) in the Project, including equipment with a value of at least two million dollars (\$2,000,000); and thereafter this condition shall be satisfied if the Collin County Appraisal District tax rolls for the applicable year, evidenced by the annual tax notice of final certified value, show the final assessed taxable value of real and personal property in the Project of at least ten million dollars (\$10,000,000.00) and (i) the date for protesting such assessment of value has passed without Costco having filed notice of protest; or (ii) Costco renders to the Collin County Appraisal District the taxable value of the real and business personal property in the Project at not less than ten million dollars (\$10,000,000.00) for that tax year; or (iii) if a protest of an assessment of value has been filed, such protest has been finally determined, which determination shows that the taxable value of the real and business personal property in the Project is not less than ten million dollars (\$10,000,000.00) for that tax year.

c. The Project must create, transfer or retain at least 100 “full time equivalent” positions during the entire term of the Agreement, regardless of whether the Grant has been paid in full and all obligations of the City to fund the Grant have been satisfied. For purposes of this paragraph “full time equivalent” shall mean 40 hours a week for one or more positions (i.e. two part time positions for 20 hours each would constitute a full time equivalent position). On or before the last day of February each year during the term of this Agreement, Costco shall deliver to the City a certificate from an authorized officer of Costco certifying to the City that during the preceding 12 month period Costco has employed not less than 100 full time equivalent employees at the Project.

d. At the time of payment of any portion of the Grant, Costco shall not be delinquent in the payment of any ad valorem taxes then owed by Costco on the Project (provided, however, Costco retains the right to timely and properly protest and contest any such taxes or fees).

If the qualifications set forth in subsections (a) – (d) initially have not been met by the date that is three (3) years from the date of this Agreement, this Agreement shall automatically terminate and be null and void. If, after all of the conditions set forth in subsections (a) – (d) above have been initially satisfied, any of the conditions set forth in subsections (b) – (d) above are thereafter not satisfied during any period of time (quarterly for the Initial Grant and annually for the Subsequent Grant) for which a Grant is calculated, then, if such failure of a condition is not cured within thirty (30) days after written notice from the City to Costco of such failure, the City shall be relieved permanently of its obligation to pay the Grant related to such calendar quarter or year; provided, however, that the subsequent failure of any of the conditions set forth in

subsections (b)-(d) above (after such conditions have been initially satisfied) shall not constitute a default hereunder, except that failure of the condition set forth in subsection (d) above that is not cured prior to the expiration of the notice and cure period set forth in Paragraph 7(b) below shall constitute an Event of Default hereunder. Furthermore, in the event the City pays the Grant to Costco for a particular period based upon a statement or information provided by Costco to the City that is incorrect and which, if corrected, would have resulted in Costco not being entitled to the Grant related to the applicable period for which the statement or information was provided, then Costco shall refund to the City the portion of the Grant which Costco received based upon such statement or information within 30 days after receipt of written demand by the City and determination of the inaccuracy of such statement or information. If Costco fails to refund such portions of the Grant as provided above, the City shall have the right to bring an action against Costco for the payment of such refund.

4. **Commencement Date; Term of the Agreement.** The Commencement Date shall be the date of Completion of Construction as defined in Section 3(a) above. The term of the Agreement shall commence on the Commencement Date and shall continue until the sooner to occur of (i) the date that the Initial Grant and Subsequent Grant have been fully disbursed in accordance with the terms of this Agreement; and (ii) the date that is twenty (20) years after the Commencement Date, unless sooner terminated as herein set forth (the "Term").

5. **Calculation and Payment of Initial Grant.**

The parties agree that the dollar amount of Sales Tax Receipts eligible for the Initial Grant payable to Costco will be derived from sales and sales tax information furnished by Costco and the Comptroller's Office of the State of Texas or any successor agency charged with collecting such information and preparing such reports (the "Texas Comptroller"). In order to obtain payment of the Initial Grant, Costco must provide the City with a Sales Tax Certificate ("Sales Tax Certificate") in the form attached hereto as **Exhibit "C"** for each applicable calendar quarter prior to the Initial Grant Termination Date. The Sales Tax Certificate shall at a minimum contain, include or be accompanied by the following:

a. A schedule detailing the amount of sales and use tax collected by Costco (or its Affiliates, lessees, sublessees or licensees) at the Project and paid to the State of Texas for the previous calendar quarter;

b. A copy of all sales and use tax returns and reports, sales and use tax prepayment returns, direct payment permits and reports, including amended sales and use tax returns or reports, filed by Costco (or its Affiliates, lessees, sublessees or licensees) with the State of Texas for the previous calendar quarter period showing the sales and use tax collected at, and paid to the State of Texas for, the Project;

c. A copy of all direct payment and self-assessment returns, including amended returns, filed by Costco (or its Affiliates, lessees, sublessees or licensees) with the State of Texas for the previous calendar quarter period showing the sales and use tax collected at the Project;

d. Information concerning any refund or credit received by Costco (or its Affiliates, lessees, sublessees or licensees) from the State of Texas of sales and use tax paid for or collected at the Project which has been reported by Costco in a Sales Tax Certificate for a previous calendar quarter and for which an installment of the Initial Grant has been paid by the City; and

e. A schedule detailing the total sales of Taxable Items consummated at the Project for the previous calendar quarter.

Costco's failure to provide the City with a Sales Tax Certificate for an applicable calendar quarter within ninety days (90) after the end of such calendar quarter shall not constitute a default under this Agreement but shall relieve the City permanently of the obligation to pay that portion of the Initial Grant that relates to such calendar quarter. The City shall pay Costco an installment of the Initial Grant from the Sales Tax Receipts received for each quarter of the calendar year within sixty (60) days of receipt of the Sales Tax Certificate and accompanying information required above and the City's portion of the Sales Tax Receipts from the State of Texas and the Texas Comptroller's Report indicating the sales collection reported to the Texas Comptroller for the Project.

Subject to the terms and conditions of this Agreement, the City will pay the Initial Grant to Costco on a quarterly basis beginning on the earlier of the months of December, March, June and September following the date Costco first meets the qualifications set forth in Paragraph 3 above and continuing each quarter thereafter on the months set forth above, provided Costco each quarter meets the qualifications set forth in Paragraph 3 above, until the earlier of (a) the tenth (10th) anniversary of the Commencement Date, (b) the Initial Grant is paid in full or (c) this Agreement is earlier terminated.

6. **Confidentiality**. Costco, its successors and assigns, shall sign and submit to City and the Texas Comptroller, the Waiver of Sales Tax Confidentiality form attached as **Exhibit "D"**. Costco and the City acknowledge that the information regarding sales taxes generated by the Project is commercial or financial information which is proprietary and confidential, the disclosure of which could cause competitive harm to Costco. To the maximum extent permitted by law, the City shall maintain the confidentiality of the information contained in the Sales Tax Certificates or similar reporting forms filed by Costco with the State of Texas and the sales tax revenue generated by the Project (collectively, the "Sales Information"), but shall be permitted to disclose the Sales Information to such City employees and consultants as the City, in its

reasonable discretion, deems appropriate in furtherance of the purposes herein set forth.

7. **Default**

a. The following shall constitute an “Event of Default” under this Agreement:

(i) Upon the expiration of the notice and cure period set forth in the first sentence of Paragraph 7(b) below, the City’s failure to process any portion of the Grant payments owing to Costco in accordance with this Agreement.

(ii) Upon the expiration of the notice and cure period set forth in the first sentence of Paragraph 7(b) below, a failure of Completion of Construction to occur on or before the Completion Deadline (as the same may have been extended by Force Majeure).

(iii) Upon the expiration of the notice and cure period set forth in the first sentence of Paragraph 7(b) below, Costco’s failure to pay any real or personal ad valorem taxes or other material fees or charges owed by Costco to the City prior to delinquency (provided, however, Costco retains the right to timely and properly protest and contest any such taxes or fees and so long as Costco is timely and properly protesting or contesting the same it shall not constitute an Event of Default).

(iv) A breach of a representation under this Agreement by Costco or the City.

b. In the event of the occurrence of a default described under Paragraph 7(a) above, the non-defaulting party may give written notice to the other party of such default, and the defaulting party shall have (i) thirty (30) days thereafter to cure said default or (ii) if the defaulting party is diligently pursuing the cure of such default but such default is not reasonably curable within thirty (30) calendar days, then the defaulting party shall have such additional amount of time as is reasonably necessary to cure such default. Should said default remain uncured after such cure period and the non-defaulting party is not otherwise in default hereunder, then the non-defaulting party shall have the right to give the defaulting party a notice (the “Second Notice”) that this Agreement shall immediately terminate if such default is not cured within fifteen (15) days after the Second Notice is given and, if such default is not cured within such additional 15-day period, regardless of the amount of time reasonably necessary to cure, then this Agreement shall terminate without further action by either party. In addition and without terminating this Agreement, Costco shall further have the power to enforce specific performance or bring an action to collect amounts owing upon an Event of Default by the City. Costco shall further have the right to seek a judicial declaration of the appropriate amount of Grant payments owing by the City. No action shall lie for damages by either party (beyond the foregoing amounts owed by the City

upon an Event of Default by the City), including punitive damages, and no special or consequential damages shall be recovered by any party.

c. This Agreement shall terminate upon the occurrence of any one of the following:

(i) the execution by both parties of a written agreement terminating this Agreement;

(ii) the expiration of the term of this Agreement;

(iii) at the option of the non-defaulting party (subject to the notice and cure and other provisions of Paragraph 7(b) above), after an Event of Default.

d. The prevailing party in any action to enforce this Agreement shall be entitled to receive reasonable attorneys' fees from the non-prevailing party.

e. The City's sole and exclusive remedies for a breach by Costco under this Agreement shall be those expressly provided for in this Paragraph 7 and elsewhere in this Agreement and the City hereby waives any other remedies under law or in equity.

f. TO THE EXTENT PERMITTED BY APPLICABLE LAWS, THE CITY VOLUNTARILY WAIVES ITS RIGHT TO ASSERT SOVEREIGN IMMUNITY FROM SUIT OR LIABILITY IN RESPONSE TO AN ACTION BY COSTCO SEEKING ONLY THE REMEDIES SPECIFIED IN THIS AGREEMENT. THE CITY DOES NOT OTHERWISE WAIVE IMMUNITIES EXISTING UNDER APPLICABLE LAWS, AND IT IS EXPRESSLY UNDERSTOOD THAT THE WAIVER HERE GRANTED IS A LIMITED AND NOT A GENERAL WAIVER, AND THAT ITS EFFECT IS LIMITED TO SPECIFIC CLAIMS UNDER THIS AGREEMENT.

8. **Force Majeure.** For purposes of this Agreement, the term "Force Majeure" shall mean and refer to (a) labor disputes, strikes, lockouts, action of labor unions; (b) inability after expending reasonable efforts to procure or general shortage of labor, equipment, facilities, materials or supplies in the ordinary course on the open market; (c) fire, earthquake, floods, explosion, actions of the elements, severe and adverse weather conditions, act of God; (d) war, invasion, riots, insurrections, civil commotion, mob violence, sabotage, act of the public enemy, terrorist acts; (e) condemnation, requisition, moratorium, unusual delay in transportation, unforeseeable acts or failures to act by any governmental entity or their respective agents or employees, unforeseeable governmental restrictions, regulations or controls; or (f) other causes beyond the reasonable control of Costco after the exercise of due diligence. Force Majeure shall not include delays caused by Costco's lack of, or inability to obtain, funds.

9. **Assignment.**

a. Except as hereinafter provided, this Agreement may not be assigned by any party without the written consent of the other parties.

b. Costco shall have the right, without the City's consent, to transfer or assign this Agreement to an Affiliate (as hereinafter defined) of Costco, provided that the operations of such Affiliate on the Project are not materially different than those conducted by Costco or its Affiliates nationally and Costco notifies the City in writing of such transfer or assignment promptly after the effective date thereof. "Affiliate" shall mean (i) any entity that controls, is controlled by or is under common control with Costco; (ii) a successor corporation related to Costco by merger, consolidation, non-bankruptcy reorganization, or government action; or (iii) a joint venture or partnership in which Costco or another entity satisfying the criteria of an Affiliate set forth in (i) – (ii) of this definition is a general partner.

c. The transfer or assignment of this Agreement to an entity which does not satisfy the requirements of Paragraph 9(b) above shall require the City's consent as evidenced by an ordinance duly enacted by the City Council after receipt by the City of Costco's written notification of such proposed transfer at least sixty (60) days before the effective date thereof. The City's consent may be withheld, conditioned, or delayed in its sole and absolute discretion and may be conditioned upon the express assumption by such transferee/assignee of all of Costco's obligations set forth in this Agreement. An assignment of this Agreement executed by the City and recorded in the real property records where the Property is located shall be conclusive evidence of the City's consent to such assignment.

d. Any attempted transfer or assignment of this Agreement by Costco in violation of the terms set forth in this Paragraph 9 shall be void ab initio, and shall entitle the City to terminate this Agreement by written notice to Costco; provided, however, that such termination shall not be effective if, within ten (10) days after its receipt of the City's termination notice, Costco shall notify the City that Costco has rescinded such attempted transfer or assignment.

e. Nothing in this Agreement shall prohibit Costco from conveying or leasing any interest in the Property; provided however that if Costco conveys or leases all of its interest in the Property or the Project to any party other than an Affiliate as permitted in Paragraph 9(b) above, then, unless an assignment of this Agreement executed by the City has been recorded in the real property records where the Property is located at the time of such conveyance or lease, this Agreement shall terminate automatically and immediately without any further action required on the part of either party. To memorialize such termination, the City shall execute a confirmation of such

termination which shall be recorded in the real property records where the Property is located.

10. **Miscellaneous.**

a. All construction will be in accordance with applicable rules, regulations and ordinances of the City, subject to any variances granted in writing by the City.

b. It is acknowledged and agreed by the parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the parties. It is further understood and agreed between the parties that the Company and the City, in satisfying the conditions of this Agreement, have acted independently, and assume no responsibilities or liabilities to third parties in connection with these actions.

c. This Agreement contains the entire agreement of the parties with respect to the matters contained herein and may not be modified or terminated except upon the provisions hereof or by the mutual written agreement of the parties hereto.

d. This Agreement shall be construed in accordance with the laws of the State of Texas and shall be performable in Collin County, Texas.

e. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

f. The individuals executing this Agreement on behalf of the respective parties below represent to each other and to others that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof. This Agreement was approved by the City Council of the City at its meeting on _____, 20____. A copy of the resolution approving this Agreement is attached hereto as **Exhibit "E"**.

g. This Agreement is executed by the parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.

h. Any notice and/or statement required and permitted to be delivered shall be deemed delivered by depositing same in the United States mail, certified with

return receipt requested, postage prepaid, addressed to the appropriate party at the following addresses:

If to City:

City of Frisco
6101 Frisco Square Blvd., 5th Floor
Frisco, TX 75034
Attn: City Manager
Phone: (972) 292-5100
Fax: (972) 292-5122

With a required copy to: Abernathy, Roeder, Boyd & Joplin, P.C.
1700 Redbud Blvd., Suite 300
McKinney, TX 75069
Attn: Bob Roeder
Phone: (214) 544-4003
Fax: (214) 544-4044

If to Costco: Costco Wholesale Corporation
999 Lake Drive
Issaquah, Washington 98027
Attention: Property Management Department

With required copies to: Thompson & Knight L.L.P.
1722 Routh Street, Suite 1500
Dallas, Texas 75201
Attention: Ray T. Khirallah
Phone: (214) 969-1370
Fax: (214) 969-1751

Each party may change the address to which notice may be sent to that party by giving notice of such change to the other parties in accordance with the provisions of this Agreement.

i. This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.

j. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision

thereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. If any subsequent federal or state legislation or any decision of a court of competent jurisdiction declares or renders this Agreement or any part hereof invalid or illegal, the parties agree to terminate (or if feasible, modify) this Agreement and to negotiate in good faith a remedy that preserves the intent of the parties hereunder as much as reasonably possible.

k. Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had an opportunity to confer with its counsel.

l. Time is of the essence in this Agreement.

m. The recitals to this Agreement are incorporated herein for all purposes. The following exhibits are attached to this Agreement and incorporated by reference herein for all purposes:

Exhibit "A" – Property
Exhibit "B" – Site Plan
Exhibit "C" – Form of Sales Tax Certificate
Exhibit "D" – Waiver of Sales Tax Confidentiality
Exhibit "E" – Copy of City Resolution.

n. The parties agree this Agreement has been drafted jointly by the parties and their legal representatives.

o. Nothing in this Agreement shall be implied to vest any rights in the parties. In addition, nothing contained in this Agreement shall constitute a "permit" as defined in Chapter 245, Texas Local Government Code. **COSTCO WAIVES ANY STATUTORY CLAIM THAT THE AGREEMENT ESTABLISHES VESTED RIGHTS UNDER CHAPTER 245 OF THE TEXAS LOCAL GOVERNMENT CODE. THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THE AGREEMENT.**

IN WITNESS WHEREOF, the parties have executed this Agreement and caused this Agreement to be effective on the latest date as reflected by the signatures below.

THE CITY OF FRISCO, TEXAS,
a municipal corporation

By: _____

Date: _____

Its: _____

COSTCO WHOLESALE CORPORATION,
a Washington corporation

Date:_____

By:_____

Its:_____

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

 This instrument was acknowledged before me on the _____ day of _____, 2011, by _____, _____ of the City of Frisco, Texas, a Texas municipality, on behalf of said municipality.

Notary Public, State of Texas

STATE OF _____ §
 §
COUNTY OF _____ §

 This instrument was acknowledged before me on the _____ day of _____, 2011, by _____, _____ of Costco Wholesale Corporation, a Washington corporation, on behalf of said corporation.

Notary Public, State of _____

Exhibit "A"
Property – Metes and Bounds Description
(___ Pages)

**Exhibit “B”
Site Plan
(2 Pages)**

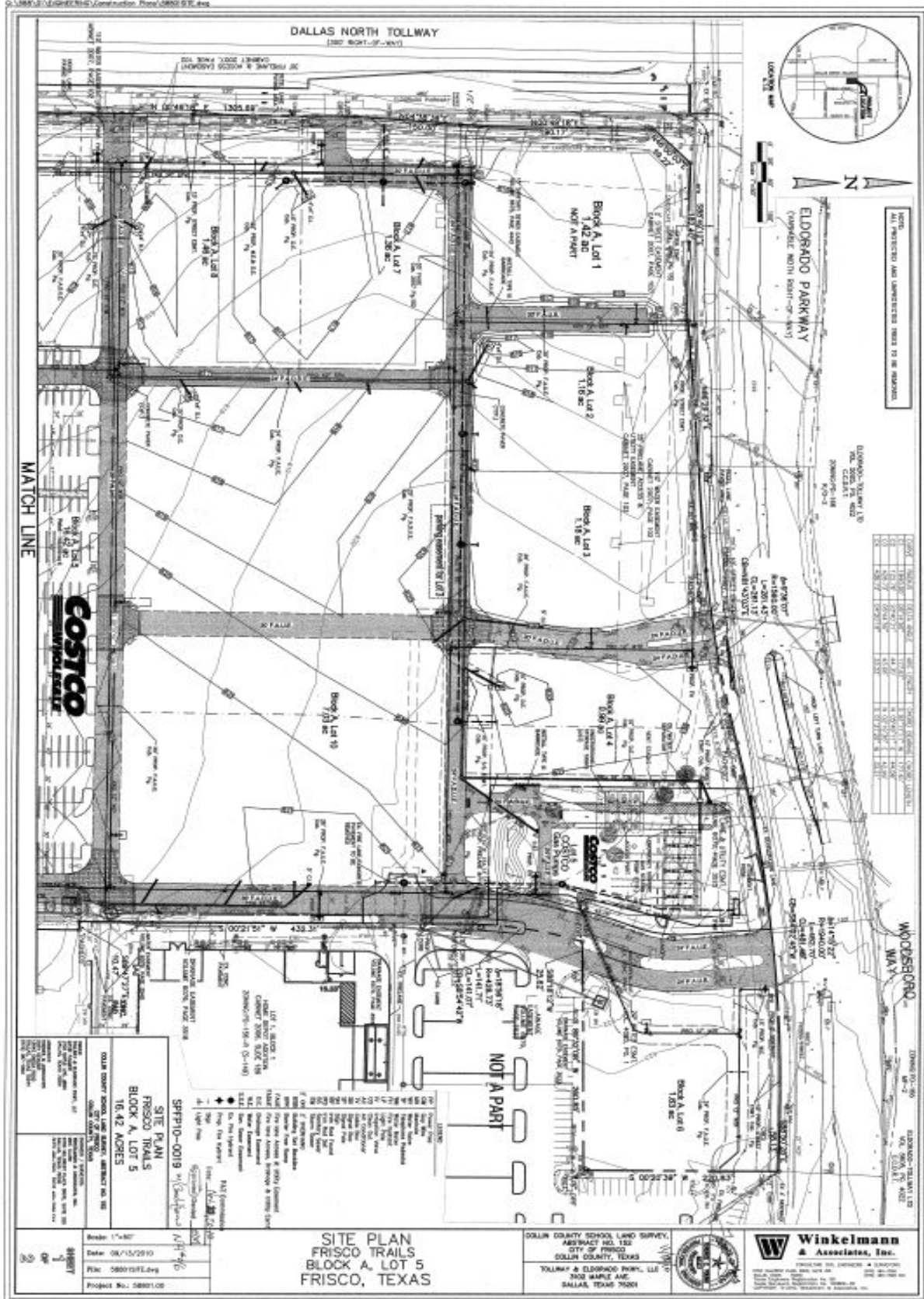




Exhibit “C”
Form of Sales Tax Certificate

Exhibit “D”
Texas Comptroller
Waiver of Sales Tax Confidentiality
(1Page)

Waiver of Sales Tax Confidentiality

Date: _____

I authorize the Comptroller of Public Accounts to release sales tax information pertaining to the taxpayer indicated below to the City of Frisco. I understand that this waiver applies only to our retail store located in _____.

Please print or type the following information as shown on your Texas Sales and Use Tax permit:

Name of Taxpayer Listed on Texas Sales Tax Permit

Name Under Which Taxpayer is Doing Business (d/b/a or Outlet Name)

Taxpayer Mailing Address

Physical Location of business Permitted for Sales Tax in Irving, Texas

Texas Taxpayer ID Number

Tax Outlet Number
(As Shown on Texas Sales Tax Permit)

Authorized Signature *

Print Name of Authorized Signature

Position of Authorized Signature

Phone # of Authorized Signature

* The authorized signature must be an owner, officer, director, partner, or agent authorized to sign a Texas Sales Tax Return. If you have any questions concerning this waiver of confidentiality, please contact the Texas Comptroller of Public Accounts at 1 (800) 531-5441.

Exhibit “E”
Copy of City Resolution
(1 Page)